



Julie Veroff
T: +1 415 693 2179
jveroff@cooley.com

August 9, 2023

Patricia S. Connor
Clerk of Court
U.S. Court of Appeals for the Fourth Circuit
1100 East Main Street, Suite 501
Richmond, VA 23129

Re: B.P.J. v. West Virginia et al., No. 23-1078

Dear Clerk Connor:

Pursuant to Federal Rule of Appellate Procedure 28(j), Plaintiff-Appellant B.P.J. respectfully submits the enclosed opinion from the Seventh Circuit in the consolidated cases of *A.C. v. Metropolitan School District of Martinsville*, No. 22-1786, and *B.E. v. Vigo County School Corp.*, No. 22-2318, dated August 1, 2023 (attached hereto as Ex. A) (the “A.C. opinion”). In the A.C. opinion, the Seventh Circuit reaffirmed circuit precedent in *Whitaker ex rel. Whitaker v. Kenosha Unified School District No. 1 Board of Education*, 858 F.3d 1034 (7th Cir. 2017), and held that transgender students who were excluded from using school restrooms consistent with their gender identity were likely to succeed on their claims under Title IX and the Equal Protection Clause.

The A.C. opinion supports B.P.J.’s arguments in multiple respects.

1. The A.C. opinion aligns with this Court’s precedent in *Grimm*, notwithstanding the Eleventh Circuit’s contrary decision in *Adams*.
2. The A.C. opinion confirms that *Bostock* “provides useful guidance” in applying Title IX. See Ex. A at 13 (“Applying *Bostock*’s reasoning to Title IX, we have no trouble concluding that discrimination against transgender persons is sex discrimination for Title IX purposes, just as it is for Title VII purposes.”). See Dkt. 138 (Pl.’s Reply) at 35-38. *Contra* Dkt. 89 (Defs.’ Br.) at 49.
3. The A.C. opinion rejects the notion that Title IX’s provisions regarding sex separation create “one definition of sex, as something assigned at birth or a function of chromosomal make-up,” and concludes that there is “insufficient evidence to support the assumption that sex can mean only [‘]biological sex[’]” based on chromosomes. Op. 15. See Dkt. 138 (Pl.’s Reply) at 41-42. *Contra* Dkt. 89 (Defs.’ Br.) at 42-47.



Patricia S. Connor
August 9, 2023
Page Two

Sincerely,

/s/ Julie Veroff

Julie Veroff